

SENATE BILL No. 97

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-3; IC 7.1-4; IC 7.1-5.

Synopsis: Direct wine shipment. Allows a farm winery located in or outside Indiana to sell and ship wine directly to an Indiana resident for personal use if the farm winery holds a direct wine shipper's permit. Requires the holder of a direct wine shipper's permit to pay the sales tax and excise tax on wine sold and shipped directly to an Indiana resident. Makes it a Class A misdemeanor for a farm winery that does not have a direct wine shipper's permit to ship wine directly to a person in Indiana who does not hold a wholesaler's permit. Makes it a Class A misdemeanor for a person in the business of selling alcoholic beverages who is located in or outside Indiana to ship alcoholic beverages to a person who does not hold a wholesaler's permit. Allows a holder of an alcoholic beverage permit to sell or offer to sell an alcoholic beverage on credit to an individual who does not hold an alcoholic beverage permit.

Effective: July 1, 2006.

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January 9, 2006, read first time and referred to Committee on Commerce and Transportation.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 97

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 7.1-3-12-5, AS AMENDED BY P.L.224-2005,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2006]: Sec. 5. (a) The holder of a farm winery permit:
4 (1) is entitled to manufacture wine and to bottle wine produced by
5 the permit holder's farm winery;
6 (2) is entitled to serve complimentary samples of the winery's
7 wine on the licensed premises;
8 (3) is entitled to sell the winery's wine on the licensed premises to
9 consumers either by the glass, or by the bottle, or both;
10 (4) is entitled to sell wine by the bottle or by the case to a person
11 who is the holder of a permit to sell wine at either wholesale or
12 retail;
13 (5) is exempt from the provisions of IC 7.1-3-14;
14 (6) is entitled to advertise the name and address of any retailer or
15 dealer who sells wine produced by the permit holder's winery;
16 (7) for wine described in IC 7.1-1-2-3(a)(4):
17 (A) may allow transportation to and consumption of the wine

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on the licensed premises; and

(B) may not sell, offer to sell, or allow the sale of the wine on the licensed premises;

(8) is entitled to purchase and sell bulk wine as set forth in this chapter; ~~and~~

(9) is entitled to sell wine as authorized by this section for carryout on Sunday; **and**

(10) is entitled to sell and directly ship wine for personal use and not for resale to a person:

(A) in Indiana as set forth in IC 7.1-3-26; or

(B) outside Indiana in accordance with the laws of the state where the person is located.

(b) With the approval of the commission, a holder of a permit under this chapter may conduct business at a second location that is separate from the winery. At the second location, the holder of a permit may conduct any business that is authorized at the first location, except for the manufacturing or bottling of wine.

(c) With the approval of the commission, a holder of a permit under this chapter may, individually or with other permit holders under this chapter, participate in a trade show or an exposition at which products of each permit holder participant are displayed, promoted, and sold. The commission may not grant approval under this subsection to a holder of a permit under this chapter for more than nine (9) days in a calendar year.

SECTION 2. IC 7.1-3-26 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 26. Direct Sale and Shipment of Wine

Sec. 1. As used in this chapter, "seller" refers to a person who holds a valid:

(1) farm winery permit issued under this title; or

(2) permit issued by a state other than Indiana that is the equivalent of a farm winery permit issued under this title.

Sec. 2. If a seller obtains a direct wine shipper's permit under this chapter, the seller may sell and directly ship not more than twenty-four (24) cases containing nine (9) liters of wine in each case annually to a person in Indiana who meets the requirements in section 3 of this chapter.

Sec. 3. A person in Indiana who is at least twenty-one (21) years of age and does not hold a valid wholesaler permit under this title may:

(1) order or purchase wine in person or by mail, facsimile

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(fax) transmission, telephone, or computer network (as defined in IC 35-43-2-3) from a seller who holds a direct wine shipper's permit under this chapter; and
 (2) receive direct shipments of wine for personal use and not for resale.

Sec. 4. To obtain a direct wine shipper's permit, a seller must provide to the commission the following:

- (1) A completed application on a form prescribed by the commission.
- (2) A one hundred dollar (\$100) registration fee.
- (3) If the seller is:
 - (A) in Indiana, the number of the seller's valid farm winery permit issued under this title; or
 - (B) outside Indiana, a certified copy of a valid permit issued by a state other than Indiana that is the equivalent of a farm winery permit issued under this title.
- (4) Any other information required by the commission.

Sec. 5. A direct wine shipper's permit remains in effect for one (1) calendar year, including the day the permit is granted as set forth in IC 7.1-3-1-3.

Sec. 6. A seller who holds a direct wine shipper's permit shall:

- (1) ensure that a container of wine shipped to a person in Indiana is conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."; and
- (2) allow the commission or the department of state revenue to examine the seller's books, papers, records, and premises under IC 7.1-4-6-1.

Sec. 7. A seller outside Indiana who holds a direct wine shipper's permit shall:

- (1) report to the commission not later than January 31 of each year, on a form prescribed by the commission:
 - (A) the identity, quantity, and price of all wine shipped into Indiana during the previous calendar year under this chapter; and
 - (B) other information required by the commission to implement this chapter;
- (2) annually pay to the department of state revenue all sales taxes and excise taxes due on the sales to residents of Indiana in the preceding calendar year, calculating the amount of the taxes as if the sales were in Indiana at the location where the delivery was made; and

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(3) be considered to have consented to the jurisdiction of the commission, any other state agency, and Indiana courts concerning enforcement of this chapter and any related laws or rules.

Sec. 8. A seller in Indiana who holds a direct wine shipper's permit shall provide the department of state revenue any information in addition to information required for sales on the winery premises to ensure compliance with this chapter.

Sec. 9. A seller who holds a direct wine shipper's permit may annually renew the permit by submitting the following to the commission:

(1) A completed application for renewal on a form prescribed by the commission.

(2) The permit information set forth in section 4(3) of this chapter.

(3) A renewal fee of fifty dollars (\$50).

Sec. 10. The fees collected under this chapter shall be deposited in the enforcement and administration fund under IC 7.1-4-10.

Sec. 11. The commission and the department of state revenue may adopt rules under IC 4-22-2 to implement this chapter.

Sec. 12. The commission may revoke a direct wine shipper's permit for failure to pay the excise taxes when required to do so by this title. The action of the commission is final.

SECTION 3. IC 7.1-4-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. ~~Persons Liable for Tax.~~ The wine excise tax shall be paid by the holder of the following:

(1) A vintner's permit, a farm winery permit, a wine wholesaler's permit, a dining car wine permit, or a boat wine permit on the alcoholic beverage to which the tax is applicable and which has been manufactured or imported by him ~~the permit holder~~ into this state. ~~Indiana.~~

(2) A direct wine shipper's permit on the wine to which the tax is applicable and that has been shipped by the permit holder to a person in Indiana.

However, the same article shall be taxed only once for wine excise tax purposes.

SECTION 4. IC 7.1-4-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. ~~Power of Commission and Department.~~ The chairman and the department shall have the power to examine the books, papers, records, and premises of a manufacturer, wholesaler, retailer, ~~or~~ dealer, ~~or direct wine shipper's permit holder~~ under this title for the purpose of determining

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whether the excise taxes imposed by this title have been paid fully and whether the provisions of the title are being complied with.

SECTION 5. IC 7.1-4-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. ~~Collection of Annual License Fees~~. The chairman shall collect the required annual license fee paid in connection with the issuance of a brewer's permit, a beer wholesaler's permit, a temporary beer permit, a dining car permit of any type, a boat permit of any type, a distiller's permit, a rectifier's permit, a liquor wholesaler's permit, a vintner's permit, a farm winery permit, a farm winery brandy distiller's permit, a wine wholesaler's permit, a wine bottler's permit, a temporary wine permit, **a direct wine shipper's permit**, a salesman's permit, and a carrier's alcoholic permit.

SECTION 6. IC 7.1-5-1-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9.5. ~~(a) An in state or an out of state vintner, distiller, brewer, rectifier, or importer that holds a basic permit from the federal Bureau of Alcohol, Tobacco, and Firearms who knowingly violates IC 7.1-5-11-1.5 commits a Class A misdemeanor.~~

~~(b) (a)~~ A person who is not described in subsection (a) who knowingly violates IC 7.1-5-11-1.5 commits a ~~Class D felony~~. **Class A misdemeanor.**

~~(c) (b)~~ If the chairman of the alcohol and tobacco commission or the attorney general determines that a vintner, distiller, brewer, rectifier, or importer that holds a basic permit from the federal Bureau of Alcohol, Tobacco, and Firearms has made an illegal shipment of an alcoholic beverage to consumers in Indiana, the chairman shall notify the federal Bureau of Alcohol, Tobacco, and Firearms in writing and by certified mail of the official determination that state law has been violated and request the federal bureau to take appropriate action.

SECTION 7. IC 7.1-5-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. ~~Purchase from Non-Permittee Prohibited~~. **Except as provided in IC 7.1-3-26**, it is a Class C infraction for a person knowingly to purchase, or to agree to purchase, an alcoholic beverage from a person who does not at the time of the purchase hold a permit authorizing the seller to sell, or agree to sell, the alcoholic beverage to the purchaser.

SECTION 8. IC 7.1-5-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12. ~~Credit Sales Prohibited~~. **(a) This section does not apply to a permittee who sells or offers to sell an alcoholic beverage to an individual who does not hold a permit under this title.**

(b) It is unlawful for a permittee to sell, offer to sell, purchase, or

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1 receive an alcoholic beverage for anything other than cash. A permittee
 2 who extends credit in violation of this section shall have no right of
 3 action on the claim.

4 (c) This section ~~shall~~ **does** not prohibit:

5 (1) a permittee from crediting to a purchaser the actual price
 6 charged for a package or an original container returned by the
 7 original purchaser as a credit on a sale;

8 (2) ~~This section shall not prohibit~~ a permittee from refunding to
 9 a purchaser the amount paid by the purchaser for a container, or
 10 as a deposit on a container, if it is returned to the permittee;

11 (3) ~~This section shall not prohibit~~ a manufacturer from extending
 12 usual and customary credit for alcoholic beverages sold to a
 13 customer who maintains a place of business outside this state
 14 when the alcoholic beverages are actually shipped to a point
 15 outside this state; **or**

16 (4) ~~This section shall not prohibit~~ a distiller or a liquor or wine
 17 wholesaler from extending credit on liquor, flavored malt
 18 beverages, and wine sold to a permittee for a period of fifteen (15)
 19 days from the date of invoice, date of invoice included. However,
 20 if the fifteen (15) day period passes without payment in full, the
 21 wholesaler shall sell to that permittee on a cash on delivery basis
 22 only.

23 SECTION 9. IC 7.1-5-11-1.5 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.5. (a) **Except as**
 25 **provided in IC 7.1-3-12-5 and IC 7.1-3-26**, it is unlawful for a person
 26 in the business of selling alcoholic beverages in ~~another state or~~
 27 ~~country~~ **Indiana or outside Indiana** to ship or cause to be shipped an
 28 alcoholic beverage directly to ~~an Indiana resident~~ **a person in Indiana**
 29 who does not hold a valid wholesaler permit under this title. This
 30 includes the ordering and selling of alcoholic beverages over a
 31 computer network (as defined by IC 35-43-2-3(a)).

32 (b) Upon a determination by the commission that a person has
 33 violated subsection (a), a wholesaler may not accept a shipment of
 34 alcoholic beverages from the person for a period of up to one (1) year
 35 as determined by the commission.

36 (c) The commission shall adopt rules under IC 4-22-2 to implement
 37 this section.

38 SECTION 10. IC 7.1-5-11-1.6 IS ADDED TO THE INDIANA
 39 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2006]: **Sec. 1.6. (a) As used in this section,**
 41 **"seller" refers to a person who holds a valid:**

42 (1) farm winery permit issued under this title; **or**

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(2) permit issued by a state other than Indiana that is the equivalent of a farm winery permit issued under this title.

(b) A seller who:

(1) does not hold a direct wine shipper's permit issued under IC 7.1-3-26; and

(2) knowingly ships wine or causes wine to be shipped to a person who:

(A) is in Indiana; and

(B) does not hold a valid wholesaler's permit under this title;

commits a Class A misdemeanor.

(c) A person who:

(1) does not hold a valid wholesaler's permit under this title; and

(2) knowingly receives a shipment of wine from a seller who does not hold a direct wine shipper's permit issued under IC 7.1-3-26;

commits a Class A misdemeanor.

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